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Undermining Our Right to Know

The American people were severely disappointed by their government and their elected officials during the 1960s and the 1970s.

During that time, the executive branch of government engaged in what turned out to be a systematic effort to withhold, protect, conceal or deny information regarding some of its most controversial actions.

There were secret, questionable decisions made regarding the Vietnam War. Covert, illegal actions were authorized and taken against American citizens. And there was a president who sought illegally to obstruct justice and then hid behind a cloak of executive immunity.

The overwhelming reaction to these activities was a strong desire among the American people to open up their government, to strengthen laws to make it accountable, and to demand to know what their government was doing.

Fundamental to this exercise and to the continuing effort to dispel distrust of government among the American public is the Freedom of Information Act (FOIA).

When enacted in 1966 by Congress, the FOIA, not surprisingly, met with opposition in the executive branch, where activities had been characterized for two decades by a penchant for secrecy. President Johnson signed the act only after weakening provisions and interpretations were included.

In 1974, Congress responded to the public clamor for even greater openness and accountability by strengthening the FOIA, even going so far as to add penalties for government employees who unlawfully withhold information.

Resistance to the FOIA in the executive branch did not abate with the 1974 amendments. Bit by bit, the legislation was amended as scores of agency officials fought to exempt certain information from disclosure.

Many of these exemptions were tacked onto authorization bills and were never reviewed by the congressional committees with jurisdiction over the FOIA; consequently, they were never codified. And though these separate forms of exemption from the FOIA are estimated to number 200, no one really knows precisely how many weakening amendments to the act have been passed.

When these exemptions are considered in the form of amendments to other laws—out of the context of the public's right to know—there is a far greater likelihood that one narrow interest will be placed ahead of the interests of the general public.

And now, once again, the law faces severe challenges, backed and inspired once again by the executive branch. The familiar refrain is heard that this agency needs relief or this information should be withheld from disclosure.

Certainly, there is justifiable concern over the potential damage that could be caused by the release of information relating to law enforcement investigations. Businesses also have legitimate concerns about losing a competitive advantage through the release of trade information regularly filed with government agencies.

These concerns, however, in no way justify a piecemeal assault on the FOIA. The act is basically sound, and any changes should be made only after proper consideration is given to the impact on the FOIA government-wide.

It became clear last year when I chaired hearings into the way the act is administered by various agencies that there is a profound absence of clear, concise and consistent guidelines for the FOIA. There is no strong lead agency directing

other federal agencies about how to manage or comply with the law. There is no single forum for those parties most affected by the act—government agencies, attorneys, reporters, businesses, scholars, researchers and authors—to channel their recommendations or frustrations.

Witnesses as disparate as those representing the Reporters Committee for Freedom of the Press and the National Association of Manufacturers agreed that the wide variations in the way the law is administered cause them difficulties.

After hearing the testimony and reviewing the record of those hearings, I submitted a report to my colleagues in the Senate recommending a number of changes designed to achieve uniformity and equity in the way the FOIA is administered by various agencies.

I also recommended that a congressional review be initiated to identify the secrecy provisions that have been attached to various laws. If these provisions can be justified, they should be reenacted as specific amendments to the FOIA.

With a sensible, uniform, government-wide approach to the FOIA, it will remain a strong instrument for helping educate the public about its government. The stakes in this matter are very high—a question of whether the public has the right to know what its government is doing. And an informed public remains our best safeguard against ill-conceived government policies.

The writer is a Democratic senator from Tennessee.